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State of Utah
Department of Commerce
Division of Public Utilities

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--- MEMORANDUM ---

TO: PUBLIC SERVICE COMMISSION OF UTAH

FROM: DIVISION OF PUBLIC UTILITIES
Chris Parker, Division Director
Bill Duncan, Manager, Telecom & Water Section
Shauna Benvegna-Springer, Utility Analyst

DATE: December 20, 2012

SUBJECT: Record of Conversation and Clarification of Lifeline Process with FCC

RE: FCC Lifeline Waiver

The December 6, 2012 participant letter (postmarked December 7, 2012) was worded with deadlines to comply with the shorter federal 30 day rule, with the intent to have the Utah Public Service Commission waive the Utah rule. After December 6, 2012, our legal counsel advised that the Utah rule cannot be waived.

Therefore, we are allowing 40 days for the participants to respond to the December 6 letter by January 15, 2013 rather than December 24 or January 7 as stated in the letter. A second letter called the "termination notice" with the decision basis will be sent on January 16, 2013 to participants who have not responded or the information provided is not accepted. The termination notice will provide 20 days to respond to the decision with proof of eligibility by February 5, 2013. A third notice will be sent to those who are terminated on February 5, 2013 with instructions to appeal within 10 days. On February 6, 2013 a letter with two lists will be sent to the wire line ETC's containing those who are eligible and those who are de-enrolled. The ETC's will have 5 days to remove the discount for the month of February 2013 and beyond.

For those who have responded, we are working with them on an individual basis and sending a decision letter at the time of approval or denial.

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

Lifeline and Link Up Reform and
Modernization

Lifeline and Link UP

Federal-State Joint Board on Universal Service

Advancing Broadband Availability Through Digital
Literacy Training

WC Docket No. 11-42

WC Docket No. 03-109

CC Docket No. 96-45

WC Docket No. 12-23

**PETITION FOR WAIVER OF
THE UTAH PUBLIC SERVICE COMMISSION**

I. Introduction

Pursuant to 47 CFR § 1.3 the Utah Public Service Commission (“PSC”) petitions for a 45 day waiver of both the December 31, 2012 and January 31, 2013 deadlines for re-certification of Lifeline subscribers¹. Note: This petition addresses only the wireline carriers in the State of Utah. The wireless carriers in the state are still self certifying at this time. The Utah Division of Public Utilities (“DPU”) has arranged to have the Utah Department of Workforce Services (“DWS”) query the relevant databases for matching program-based eligibility for every wireline Lifeline subscriber in Utah. The DPU has mailed re-certification notices to those subscribers

¹ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd at 6714-22, paras. 129-48; 47 C.F.R 54.410(f).

who were not verified as eligible on a program basis.² The Utah Administrative Rule currently in effect requires 60 days between notice and de-enrollment.³ As a result of this and significant delays including dissolution and reassignment by the state legislature of the agency previously tasked with managing the databases relevant to re-certification and unexpectedly high number of subscribers not automatically eligible for Utah Lifeline, re-certification cannot be completed by the deadlines. Therefore the PSC requests waiver of the December 31, 2012 and January 31, 2013 deadlines, and requests a 45 day extension of each respectively so that the due process requirements of the state rule for de-enrollment may be met.

II. Background

On December 2, 2010 as part of the follow-up on several on-going federal wireless ETC applications which had been heard, and granted, by the Utah PSC the PSC opened a docket to decide the following issues.⁴

- The process for verification of continuing eligibility (i.e. annual certification) of Lifeline customers;
- The determination of entities that may verify the continuing eligibility of Lifeline customers;
- The method of calculation and recovery of costs for verifying continuing eligibility of Lifeline customers, particularly for ETCs not paying to the state USF fund;
- The role of the “responsible agency”, *see* Utah Admin. Code R.746-341-2.B., in verifying continuing eligibility of Lifeline customers;
- The determination and implementation of a process to prevent customers from receiving duplicate service from multiple providers (double-dipping);
- The process for avoiding unauthorized changes of a Lifeline carrier, and preventing slamming;

² The Utah Division of Public Utilities is the administrator of the Lifeline program in Utah.

³ Utah Admin. Code R. 746-341-4(C)(2)(c) requires “at least 40 days to demonstrate continued eligibility.” In the event that the subscriber fails to respond a notice so intent to discontinue is issued and rule 746-341-4(D)(1) requires an additional 20 day period within which to Lifeline may not be discontinued.

⁴ Resol. of Certain Issues Related to the Designation of a Common Carrier as an Eligible Telecomm. Carrier, Docket No. 10-2528-01 (Utah PSC 2010).

- Whether the findings, conclusions, and orders made in this proceedings apply equally to all ETCs in the state, regardless of technology or business model used;
- Whether additional rulemaking proceedings/and or additional reporting requirements are necessary to implement the determinations made in these proceedings.

On March 14, 2011 the PSC issued an Order reflecting additional areas to be addressed in the Docket. The new areas were:

- The role of the “responsible agency,” *see* Utah Admin. Code R746-341-2(B), -3(C), in the initial certification of Lifeline customers;
- Initial certification process and requirements; and the method of calculation and recovery of any costs of initially certifying Lifeline customers, particularly of certifications for Eligible Telecommunications Carriers not paying into the State Universal Service Fund.
- The establishment of oversight and guidelines for Lifeline outreach and advertising to ensure that customers are receiving necessary and accurate eligibility, terms of service and provider information, and to expand outreach activities to reach a larger percentage of the population eligible for Lifeline services;
- The establishment of Lifeline outreach and advertising requirements to incorporate eligibility verification and duplicate service prevention.

In October of 2011 the PSC started discussions with the DWS to determine if, and how, it could both continue to do the landline eligibility certification and add in wireless certification.

In November of 2011 a census of one carrier’s Lifeline customers’ records was obtained and in December of 2011 the population collected was tested against the DWS’s program participation records to determine the match with program based eligibility. The intent of this exercise was to estimate the percentage of Lifeline subscribers which would need follow-up mailings for verification to determine on-going eligibility. The result of this record matching exercise showed less than 3% would require re-certification follow-up. The population which was checked was from a wireless ETC, this turned out to not be representative of the wireline Lifeline subscriber population.

On January 31, 2012 FCC Transformation Order was adopted.

On April 25, 2012 the United States Telecom Association applied for a waiver of certain requirements of the Lifeline Reform (Transformation) Order on behalf of states which currently provide some initial certification themselves. Utah is included in the listed of states for which a waiver was requested.

On May 31, 2012 the FCC granted USTA's waiver request. The waiver expired on December 1, 2012.

During the 2012 General Legislative Session (January to March) the Utah Legislature Passed House Bill 139 and incorporated the agency which the PSC contracted with to perform Lifeline eligibility certification (responsible agency) into the DWS. The resulting change in agency organization became effective in July 2012.

On July 31, 2012 the PSC requested interested parties to file questions and comments about, or on, the ability of the DWS's eRep system to handle the Lifeline eligibility certification process, for both initial certification and on-going eligibility certification.⁵ The eRep system is the interface and database the State of Utah uses to administer nearly all of its aid type programs including all of those that are automatic qualifiers for Lifeline assistance. Adding Lifeline to this system makes sense from an efficiency stand-point, the issue is whether the system is capable of meeting all of the FCC's requirements.

On October 16, 2012 the PSC issued an Order with its final requirements document for the verification system, specifying all criteria which must be met by the eRep system to fulfill

⁵ *Id.*

the state's responsibilities regarding determining Lifeline eligibility of participants.⁶ As of this point-in-time the DWS is preparing a bid and work description for the programming and implementation in response to this Order.

The Utah Commission intends to continue to utilize a centralized eligibility and verification system as it has found that doing so reduces costs. Further, it improves the ability of the system to stop potential "double dippers" as the database will be completely integrated into the State's general verification system used for all of its aid programs. This will improve the ability of the program administrators to define households and ensure all relevant guidelines and rules are followed. Additionally, it has the advantage that local telephone companies will no longer have any need to receive, review, verify, and store income or program participation information from their customers.

On or about November 1, 2012 5,000 re-certification application forms and envelopes were ordered and the mailing was scheduled to be completed by November 30, 2012.

By November 7, 2012 all 19 Utah wireline carriers had submitted their lists of Lifeline subscribers to the Utah Division of Public Utilities. There were a total of 24,559 Lifeline customers at that time. Note: The wireless ETC carriers are still self-certifying and are not the subject of this petition – nor was data on their customers collected for this round of certification/verification.

On November 8, 2012 the lists of Lifeline customers were transmitted to the responsible agency (on within the DWS as directed by the Utah Legislature and Governor). The first system wide re-certification data query of the eRep system was initiated.

⁶ *Id.*

On November 21, 2012 the DPU received the identification of those subscribers not automatically re-certified based on enrollment in other aid programs administered through the system. The number of subscribers who could not be automatically recertified was 14,965 out of 24,559 customers submitted. Because there were significantly more mailings necessary than had been initially expected, the supply of materials to complete the mass mailing was insufficient. As a result the mailing of notifications to the affected customers of the need to recertify was not completed by November 30, 2012 as had been originally planned.

On December 7, 2012, the Department of Workforce Services mailed letters to the 14,965 subscribers who were not automatically re-certified based on low income assistance program eligibility notifying them of the need to recertify and providing them with the form required and instructions on regarding the options available.

III. Discussion

The Federal Communications Commission has authority to grant waiver and extension of the deadlines requested by the Utah PSC.⁷ In its recent Order this Commission stated in relevant part that:

Generally, the Commission's rules may be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Waiver of the Commission's rules is appropriate when (i) special

⁷ 47 C.F.R. § 1.13

circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.⁸

The Utah PSC will be a couple weeks late in providing the re-certification information to the wireline ETCs in order to meet the deadlines. It would be just and equitable to allow a temporary waiver granting an additional 45 days within which to complete the Lifeline re-certification requirements. Throughout the past few months Utah has experienced substantial barriers to meeting these deadlines. The primary barrier was that the Utah Legislature in the 2012 general session re-organized the state agency which had previously been managing the databases that are necessary for re-certification. The bill went into effect on July 1, 2012.

In September of 2010, the PSC received notification from the responsible agency previously in charge of the processing eligibility for Lifeline that it would likely not be capable of processes the expected large volume of new applicants arising from the certification of wireless ETC carriers in the state of Utah. Also the existing procedures the responsible agency was currently using would not be capable of correctly handling the required information for the wireless ETC carriers' Lifeline customers. As a result of this various options were considered. The Utah Legislature enacted a bill to reorganize state agencies, the result of which was that the responsible agency was to be moved into the same department which administered the aid programs upon which Lifeline eligibility is conditioned. The ultimate result would benefit all of the parties involved with the Lifeline program.

Utah House Bill 139 split up what was the Utah Department of Community and Culture. Within this Department was the Division of Housing and Community Development (the responsible agency). The PSC had an ongoing relationship with this Division for maintaining the data necessary and performing the data matching with respect to both the initial and on-going

⁸ *Lifeline Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Order (issued Nov. 30, 2012) (identified as DA 12-1927).

Lifeline certification. As a result of this reorganization the control and maintenance of all low income assistance programs were placed with the DWS. This agency, while having greater technological expertise and ability than the previous responsible agency had, required both new programming and new agreements with the PSC in order to be able to provide the required Lifeline verification and data warehousing services.

The PSC has been working diligently toward creating a new agreement which will allow DWS to perform the required application processing and data matching with the various programs necessary for both initial and re-certification. The PSC has opened multiple dockets in order to allow the interested parties to work together toward implementing a more robust system that is both lower cost, easier for subscribers, ETCs, and state regulators to use, and compliant with the Transformation order. Unfortunately crafting a framework and agreements between multiple involved state agencies which involves sharing data and significant software development is time consuming. As of the time of this petition there remain ongoing dockets relating to this matter.

Working toward attempting to meet the deadlines, the databases were queried and those wireline Lifeline subscribers that could be re-certified based on the low income assistance programs were identified (9,584 of 24,559 Lifeline customers). Since we had conducted the eligibility test in November of 2011 it was anticipated (incorrectly it turns out) that a majority of the wireline Lifeline subscribers would be eligible based on a program participation basis. The supplies which had been previously ordered to complete the anticipated 5,000 mailings were insufficient when the query of the programs returned 14,965 subscribers requiring notice by mail. Although more supplies were quickly ordered, an additional delay occurred. Rather than

being mailed on November 30, 2012 as was intended, the mailings were made on December 7, 2012.

As an additional concern, Utah administrative rules require a total of 60 days for the de-enrollment process to be completed. This rule is potentially inconsistent with the recent changes to 47 CFR § 54.405.⁹ As a result of these facts the earliest date on which the list of subscribers which may be de-enrolled will be available to be sent to the wireline ETCs is approximately January 20, 2013.

Utah has not sat on its laurels. Rather, Utah and the interested parties have worked diligently toward compliance with the Transformation Order. Under these circumstances Utah has still managed to perform all of the critical steps necessary to provide the ETCs data necessary to complete the de-enrollment process. The databases have been queried. Those eligible for recertification based on the low income assistance programs have been identified. Those not identified have been mailed proper notice. Unfortunately because of the existing Utah Administrative Rule, and the later than anticipated date of mailing, the de-enrollment portion of the re-certification cannot be completed by December 31, 2012. As such the wireline ETCs cannot be prepared by January 31, 2013 to meet their reporting requirements.

This situation is unique and unusual. The special circumstances warrant a 45 day waiver. Failure to meet the deadlines is not the result of failure of effort to do so. The public policy goal of a system-wide review and re-certification of all Lifeline subscribers is being met, and will continue to be met on an on-going basis. Every wireline Lifeline subscriber in Utah is being re-

⁹ 47 CFR § 54.405 as amended by the Lifeline Order is internally inconsistent as it applies to Utah. § 54.405 states that “[a] carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination, that requires, at a minimum, written notification of impending termination, must comply with the applicable state requirements.” Based on this Utah would be required to follow the current rules allowing a total of 60 days for de-enrollment. § 54.405 then goes on to require a subscriber be provided 30 days to respond and further then requires termination if not responded to within the 30 day period. The clause requiring Utah to comply with its state rule 40 day notice plus 20 day appeal and the clause requiring Utah to comply with the FCC’s 30 day de-enrollment requirement cannot both be fulfilled.

certified. All eligible Lifeline subscribers will remain enrolled, and all ineligible subscribers will be de-enrolled in a timely manner. The critical actions have been taken. Granting this waiver would not result in unfair, special, or favorable treatment. It would not reward non-compliance. Rather it would result in just and equitable treatment of the ETC carriers and protection of the due process rights of the wireline Lifeline subscribers who are subject to the potential gap in Lifeline support.

IV. Conclusion

Therefore the PSC respectfully requests that the Commission grant a waiver of the December 31, 2012 and January 31, 2013 deadlines for re-certification and grant an additional 45 days for the compliance with each respectively.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	
Petition of the Utah Public Service Commission)	
)	

ORDER

Adopted: February 8, 2013

Released: February 8, 2013

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants a limited waiver, from sections 54.410(f) and 54.416(b) of the Commission's rules and the deadlines established in paragraphs 130-32 of the *Lifeline Reform Order*,¹ to the Utah Public Service Commission (Utah PSC) and wireline Eligible Telecommunications Carriers (ETCs) in the state of Utah.²

2. The Utah PSC is responsible for recertifying the eligibility of Lifeline subscribers for wireline ETCs in the state of Utah.³ The Utah PSC reports that, despite good faith efforts, it will not be able to complete the 2012 recertification process in Utah for wireline ETCs until mid-February 2013.⁴ As a result, wireline ETCs in Utah will be unable to comply with section 54.416(b) of the Commission's rules and file their annual recertification report (Form 555) by January 31, 2013.⁵ We find that good cause has been shown to grant (1) the Utah PSC a waiver from section 54.410(f) and the December 31, 2012 recertification deadline in paragraph 130 of the *Lifeline Reform Order*, until February 14, 2013; and (2) wireline ETCs in Utah a waiver from section 54.416(b) and the annual reporting deadline in paragraph 132, until March 17, 2013.⁶ The waivers granted in this Order are limited, one-time waivers of section

¹ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6715-16, paras. 130-32 (*Lifeline Reform Order*).

² See 47 C.F.R. §§ 54.410(f), 54.416(b); *Lifeline Reform Order*, 27 FCC Rcd 6656, 6715-16, paras. 130-32; Petition of the Utah Public Service Commission, WC Docket No. 11-42 et al., CC Docket No. 96-45 (filed Dec. 18, 2012) (Petition).

³ See Petition at 5.

⁴ See 47 C.F.R. § 54.410(f); *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 130 n.337 (setting December 31, 2012 deadline for the 2012 recertification).

⁵ See 47 C.F.R. § 54.416(b); *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 132 (setting January 31, 2013 deadline for the filing of Form 555).

⁶ The wireline ETCs subject to this waiver are All West Utah, Inc.; Bear Lake Communications; Beehive Telecom, Inc.; Carbon - Emery Telecom Inc.; Central Utah Telephone; CenturyTel of Eagle, Inc.; Citizens Telecommunications Company of Utah; Direct Communications Cedar Valley, LLC; Emery Telephone; Gunnison Telephone Company; Hanksville Telecom, Inc.; Manti Telephone Company; Navajo Communications Company, Inc (UTAH); Qwest Communication, QC d/b/a CenturyLink QC; Skyline Telecom; South Central Utah Telephone Association, Inc.; UBTA-UBET Communications, Inc. (Unitah Basin Telephone Association). See Letter of Utah

(continued...)

54.410(f), section 54.416(b) and the deadlines in paragraphs 130 through 132 of the *Lifeline Reform Order*.⁷

II. BACKGROUND

A. Annual Lifeline Recertification Reporting Requirements

3. *2012 Recertification Requirement.* In the *Lifeline Reform Order*, the Commission adopted a set of uniform recertification procedures that all ETCs must perform annually to verify the ongoing eligibility of their Lifeline subscribers.⁸ Section 54.410(f) requires that ETCs annually recertify the eligibility of their subscribers.⁹ To comply with the annual requirement for 2012, all ETCs and, where applicable, state Lifeline administrators or an agent of the state (collectively, “state agencies”) were required to recertify by the end of 2012 the eligibility of their Lifeline subscriber base as of June 1, 2012, and report the results to the Commission and the Universal Service Administrative Company (USAC) by January 31, 2013 (2012 recertification requirement).¹⁰ The 2012 recertification requirement was intended to work in lock step with the new certification of eligibility requirements established in the *Lifeline Reform Order*.¹¹ The Commission found that the upfront documentation requirement upon enrollment would be a sufficient initial check of subscriber eligibility, and the annual subscriber self-certification would assist in obtaining updated subscriber information for use in populating the National Lifeline Accountability Database.¹² The requirement for ETCs to annually recertify their Lifeline subscribers ensures that only eligible subscribers remain in the program.¹³ Any subscribers that fail to respond to the ETC’s or state agency’s recertification efforts must be de-enrolled from Lifeline pursuant to the de-enrollment procedures set out in the Commission’s rules.¹⁴

4. In the absence of an eligibility database, the ETC or state agency must recertify the continued eligibility of a subscriber by obtaining a signed certification from the subscriber that meets the requirements of 47 C.F.R. § 54.410(d).¹⁵ The *Lifeline Reform Order* makes clear that “[r]egardless of the format used to recertify the subscriber’s continued eligibility for Lifeline, ETCs [or a state agency] must convey all of the required information set forth in the amended section 54.410(d) and obtain from the

(Continued from previous page) _____

Public Utilities Commission, WC Docket No. 11-42 (filed Dec. 27, 2012). According to USAC, three additional companies listed in the letter, Albion Telephone Company, Farmer’s Telephone Company, and Union Telephone Company, do not receive Federal support and are therefore not subject to this waiver.

⁷ See *Lifeline Reform Order*, 27 FCC Rcd at 6715-16, 6897, paras. 130-32, App. C.

⁸ See *id.* at 6714-22, paras. 129-48.

⁹ See 47 C.F.R. § 54.410(f).

¹⁰ *Lifeline Reform Order*, 27 FCC Rcd at 6716, para. 132.

¹¹ See *id.* at 6716-17, para. 134. The 2012 recertification process required that ETCs recertify their base of Lifeline subscribers as of June 1, 2012. The new documentation requirements, under which subscribers show proof of eligibility upon enrollment, became effective June 1, 2012. Therefore, the two requirements were designed to ensure that eligibility was verified in 2012 for all Lifeline subscribers.

¹² *Id.*

¹³ See *id.* at 6717, para. 135.

¹⁴ 47 C.F.R. §§ 54.405(e), 54.410(f)(5).

¹⁵ See 47 C.F.R. §§ 54.410(d), 54.410(f)(2)(iii), 54.410(f)(3)(iii); *Lifeline Reform Order*, 27 FCC Rcd at 6715, 6897, para. 130, App. C.

subscriber an individual certification for each requirement set forth in the rule.”¹⁶ In order to obtain a signed certification from the subscriber, the ETC or state agency must send a notice to the subscriber separate from the subscriber’s bill seeking information sufficient to recertify the subscriber, and notifying the subscriber that he or she will be de-enrolled within 30 days unless the subscriber recertifies that the subscriber is eligible to receive Lifeline.¹⁷ ETCs or state agencies may contact and receive recertification responses from subscribers in writing, by phone, by text message, by e-mail, by Interactive Voice Response (IVR), or otherwise through the Internet using an electronic signature.¹⁸ If an ETC or state agency is unable to recertify a subscriber because the subscriber did not respond to the recertification request, or the ETC or state agency receives a response from the subscriber that the subscriber is no longer eligible, the subscriber must be de-enrolled within five business days.¹⁹

5. Each ETC must report the results of its 2012 recertification process to the Commission and USAC by January 31, 2013, using FCC Form 555.²⁰ The recertification process is not considered “complete” until the ETC has de-enrolled all subscribers that either failed to respond to a recertification request or stated that they are no longer eligible, or where a database query by the ETC or state agency indicates the subscriber is no longer eligible and the ETC has de-enrolled that subscriber.²¹

6. The Utah PSC is managing the recertification process for wireline ETCs in Utah.²² In its waiver request, the Utah PSC argues that due to circumstances outside of its control, it was unable to complete the recertification process by December 31, 2012.²³ The Utah PSC therefore seeks a 45-day waiver of the obligation to complete the recertification process for wireline ETCs until February 14, 2013, and for wireline ETCs in Utah to file Form 555 until March 17, 2013.²⁴

¹⁶ *Lifeline Reform Order*, 27 FCC Rcd at 6716, para. 132. Electronic signatures may be used to satisfy the recertification requirement.

¹⁷ 47 C.F.R. § 54.405(e)(1).

¹⁸ See 47 C.F.R. § 54.419; *Lifeline Reform Order*, 27 FCC Rcd at 6716, para. 132. Any text messages sent for the purpose of recertification must be sent to the phone number associated with the supported service and responses must be sent from that phone number. *Lifeline Reform Order*, 27 FCC Rcd at 6716, para. 132. When utilizing phone or IVR, a subscriber must be prompted to certify to each individual requirement set forth in section 54.410(d). *Id.* If the state agency or third party is responsible for performing the annual recertification functions, the state or its agent must provide the ETC with a copy of the completed recertification form. *Id.* at 6715, para. 131 n.341. The ETC or state agency must also notify the subscriber in writing that failure to respond to the recertification request could result in de-enrollment. *Id.* at 6720, para. 142.

¹⁹ See 47 C.F.R. § 54.405(e). If the state agency is performing the recertification, the ETC must de-enroll the subscriber within 5 business days of receiving notice from the state agency that the subscriber was unable to be recertified.

²⁰ See *Lifeline Reform Order*, 27 FCC Rcd at 6716, para. 132; 47 C.F.R. § 54.416(b). The Office of Management and Budget-approved FCC Form 555 is posted on USAC’s website at http://www.usac.org/_res/documents/li/pdf/forms/FCC-form-555.pdf. See also *Wireline Competition Bureau Reminds Carriers That They Must Recertify Eligibility Of All Lifeline Subscribers by December 31, 2012*, WC Docket No. 11-42 et al., CC Docket No. 96-45, Public Notice, 27 FCC Rcd 12327, 12328 (Wireline Comp. Bur. 2012) (*Recertification Reminder PN*).

²¹ *Recertification Reminder PN*, 27 FCC Rcd at 12328.

²² See *Petition* at 1-2.

²³ See *id.* at 5.

²⁴ See *id.* (seeking a 45 day waiver of both the December 31, 2012 recertification deadline and the January 31, 2013 deadline to file Form 555).

7. In order to comply with the Commission's recertification requirements, the Utah PSC utilized a state eligibility verification database.²⁵ The Utah PSC however, was unable to use the database until late in 2012 due to the legislature's reorganization of the relevant state agencies.²⁶ When the Utah PSC submitted wireline ETCs' Lifeline subscribers' names to the database, a significant number of subscribers could not be recertified.²⁷ The Utah PSC sent recertification notices to those subscribers that it could not recertify through the database. Because of resource constraints, the Utah PSC asserts that it could not send these notices until December 7, 2012.²⁸ Utah rules require 60 days between (1) the mailing to a subscriber of a recertification form accompanied by a notice of de-enrollment for failure to respond; and (2) the de-enrollment of the subscriber.²⁹ As a result, the soonest that an ETC could de-enroll a subscriber under Utah rules for a non-response to the recertification attempt would be February 5, 2013, 60 days after the notice of de-enrollment for failure to recertify.³⁰ Wireline ETCs in Utah will not receive the subscriber de-enrollment information from the Utah PSC necessary to fill-out and submit Form 555 until at least February 6, 2013.³¹ The Utah PSC argues that despite its best efforts, it cannot complete the recertification process and provide the necessary information for wireline ETCs in Utah to file Form 555 by the deadlines set forth in the Commission's rules, and asserts that there is good cause for a 45-day waiver of the Commission's deadlines to fully come into compliance with sections 54.410(f), 54.416(b) and paragraphs 130-32 of the *Lifeline Reform Order*.³²

III. DISCUSSION

8. Generally, the Commission's rules may be waived for good cause shown.³³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁵ Waiver of the Commission's rules is appropriate when (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.³⁶

²⁵ See *id.* at 5-6.

²⁶ See *id.* at 8-9.

²⁷ See *id.* at 6.

²⁸ See *id.* ("Because there were significantly more mailings necessary than had been initially expected, the supply of materials to complete the mass mailing was insufficient"); Letter of Chris Parker et al., Utah PSC, to Marlene H. Dortch, FCC, WC Docket No. 11-42, CC Docket No. 96-45 (filed Dec. 27, 2012) (UPSC Letter).

²⁹ See Petition at 2 n.3 ("Utah Amin. Code R. 746-341-4(C)(2)(c) requires 'at least 40 days to demonstrate continued eligibility.' In the event that the subscriber fails to respond, a notice [of] intent to discontinue is issued and rule 746-341-4(D)(1) requires an additional 20 day period within which [] Lifeline may not be discontinued."). In contrast, the Commission only requires a 30-day period between notice of recertification and subscriber de-enrollment for failure to respond. See 47 C.F.R. § 54.405(e)(4). We reach no conclusion at this time as to whether the Utah rule requiring 60 days notice is pre-empted by section 54.405(e)(4). However, we find that it was not unreasonable for Utah to follow its existing 60-day rule in light of the Commission's 2012 rule revisions, and that, at the present time, requiring less than 60 days notice for Utah subscribers would add to consumer confusion.

³⁰ See UPSC Letter.

³¹ See *id.*

³² See Petition at 9.

³³ See 47 C.F.R. § 1.3.

³⁴ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

³⁵ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

³⁶ See *Northeast Cellular*, 897 F.2d at 1166.

9. The Bureau grants the Utah PSC a limited, 45 day waiver of section 54.410(f) and paragraph 130 of the *Lifeline Reform Order* until February 14, 2013, and the wireline ETCs in Utah a limited, 45 day waiver of section 54.416(b) and paragraph 132 of the *Lifeline Reform Order* until March 17, 2013.³⁷ We find that the unique circumstances preventing timely Utah PSC access to an eligibility database provide good cause to grant this waiver.³⁸ Moreover, because a majority of Lifeline subscribers in Utah are served by wireless ETCs (which are not subject to this waiver), the relief provided will cover well under half of the Lifeline subscribers in the Utah.³⁹ In addition, we note that the relief we grant only delays, but not does permanently waive, wireline ETCs' and the Utah PSC's compliance with their recertification obligations; by early 2013, all subscribers in Utah subject to the 2012 recertification requirement will be recertified and all ETCs in Utah will file Form 555. For the foregoing reasons, we conclude that a limited waiver is appropriate in this case.

IV. ORDERING CLAUSES

10. IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and the delegation of authority in paragraph 130 of FCC 12-11, the petition filed by the Utah Public Service Commission is GRANTED to the extent described above.⁴⁰

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau

³⁷ A 45 day waiver would provide relief until March 17, 2013. Because March 17, 2013 falls on a Sunday, a Commission holiday, wireline ETCs in Utah may file their Form 555 by March 18, 2013. See 47 C.F.R. § 1.4(j).

³⁸ See *supra* para. 7.

³⁹ According to USAC data from October 2012, of the 118,675 Lifeline subscribers in Utah, 96,163, or over 80 percent, are served by wireless ETCs not subject to this petition.

⁴⁰ See *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 130 n.338.